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Eco Horizon Sdn Bhd v Occupants of the Arulmigu Sri Maha Muthu Mariamman Temple & Ors

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HIGH COURT (PENANG) — SUIT NO PA-22NCVC-89–04 OF 2019
WONG HOK CHONG JC
27 JULY 2021

C

Civil Procedure — Discovery — Application for discovery of development agreement — Whether there was inordinate delay in filing application — Whether failure to file preceding application for general discovery fatal — Whether document sought necessary for fair disposal of the suit — Whether document sought relevant to the issue in dispute — Rules of Court 2012 O 24

D

Contract — Privity — Development agreement — Defendant applied for discovery of agreement — Defendant was not a party to agreement — Whether non-party had right to enforce agreement

E

This was the defendants' application for discovery pursuant to O 24 rr 7 and 12 of the Rules of Court 2012 ('the RC') for the discovery and production of a copy of a development agreement. The plaintiff's cause of action was founded in the tort of trespass onto its land. The defendants' defence was that they had a licence from the previous owner to stay on plaintiff's land. The application sought for the discovery of a 'Perjanjian Pembangunan Hartanah di antara Perbadanan Pembangunan Pulau Pinang (PDC) dengan Eco Horizon Sdn Bhd'. The defendants filed their application on 24 February 2021. By then, the bundle of documents had already been finalised in accordance with the pre-trial directions and trial was scheduled to commence on 16 March 2021. The plaintiff objected to the application on the grounds that: (a) the delay in the filing of the application; and the failure to file a preceding application for general discovery was fatal; (b) the document sought was not necessary for disposing fairly of the cause or matter or relevant to the proceedings.

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Held, dismissing the defendant's application:

(1) Although O 24 r 3 of the RC provided that the application could be made at any time, practice dictated that the application for discovery should be made once the issues have been identified after the close of pleadings, but at the early stages of pre-trial case management before the filing of the bundle of documents. The application was filed on the eve of trial, less than three weeks before the trial was due to start. This delay was inordinate. Pleadings had long closed and the filing of the bundle of documents had been long concluded. At least 22 months had lapsed from

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the time the defendants became aware of the purported issue and eight months from the time the defendants became aware of the document sought. Further, the defendants did not proffer any reasonable or cogent explanation for the delay (see paras 7 & 13–15).

(2) Further, the application for discovery of a particular document pursuant to O 24 r 7 of the RC should follow a preceding application or order for general discovery pursuant to O 24 r 3 of the RC. The defendants had not filed a preceding application for general discovery. It was thus mandatory for the court to dismiss the application unless the order was necessary or desirable. There were no proviso qualities present (see paras 16–17).

(3) The document sought for discovery was not necessary for the fair disposal of or relevant to the proceedings. The issue in dispute pertained to proprietary rights. It did not concern contractual rights and the defendants were not seeking any contractual remedies against the plaintiff. It had nothing to do with the subject cause of action and was thus irrelevant to the proceedings. The defendants were not a party to the agreement subject of the document sought, which was between PDC and the plaintiff. As a non-party thereto, the defendants had no rights to enforce the contract, even if it was for his benefit. This was a trite principle of the law of privity of contract. Not only were the defendants not a party to the agreement of the document sought, it was also a confidential document (see paras 23–24, 26 & 28).

(4) The defendants were not even a third party beneficiary of the purported agreement between PDC and the plaintiff. PDC, in its allocation of land for the purposes of *rumah ibadat bukan Islam* ('RIBI') for the Hindu community, were dealing with the Hindu Endowment Board and not the defendant. In other words, not only were the defendants not a party to the agreement between PDC and the plaintiff — thus, having no right to enforce the agreement; they were not even a beneficiary thereunder — thus, there was no expectation of them even receiving anything gratuitously (see paras 29–30).

[Bahasa Malaysia summary

Ini adalah permohonan defendan bagi penzahiram menurut A 24 kk 7 dan 12 Kaedah-Kaedah Mahkamah 2012 ('KKM') untuk penzahiran dan pengemukaan salinan perjanjian pembangunan. Kausa tindakan plaintif adalah berdasarkan tort pencerobohan ke atas tanahnya. Pembelaan defendan adalah mereka mempunyai lesen daripada pemilik terdahulu untuk tinggal di tanah plaintif. Permohonan yang dimohon adalah untuk penzahiran 'Perjanjian Pembangunan Hartanah di antara Perbadanan Pembangunan Pulau Pinang (PDC) dengan Eco Horizon Sdn Bhd'. Defendan memfailkan permohonan mereka pada 24 Februari 2021. Pada masa tersebut, ikatan dokumen telah pun disempurnakan mengikut arahan pra-perbicaraan dan

perbicaraan ditetapkan bermula pada 16 Mac 2021. Plaintif membantah permohonan tersebut atas alasan bahawa: (a) kelewatan dalam pemfailan permohonan dan kegagalan untuk memfailkan permohonan terdahulu untuk penzahiran am adalah memudaratkan; dan (b) dokumen yang dipohon adalah tidak perlu untuk melupuskan secara adil kausa atau perkara atau relevan dengan prosiding tersebut.

Diputuskan, menolak permohonan defendan:

(1) Walaupun A 24 k 3 KKM memperuntukkan bahawa permohonan boleh dibuat pada bila-bila masa, amalan yang ditetapkan adalah bahawa permohonan untuk penzahiran harus dibuat sebaik sahaja isu-isu telah dikenal pasti selepas pliding ditutup, tetapi pada peringkat awal pra-pengurusan kes perbicaraan sebelum pemfailan ikatan dokumen. Permohonan difailkan pada saat sebelum perbicaraan, kurang daripada tiga minggu sebelum perbicaraan sepatutnya dimulakan. Kelewatan ini adalah melampau. Pliding telah lama ditutup dan pemfailan ikatan dokumen telah lama disempurnakan. Sekurang-kurangnya 22 bulan telah berlalu dari masa defendan menyedari isu yang didakwa dan lapan bulan dari masa defendan menyedari dokumen yang dimohon. Selanjutnya, defendan tidak memberikan sebarang penjelasan yang munasabah atau kukuh untuk kelewatan tersebut (lihat perenggan 7 & 13–15).

(2) Selanjutnya, permohonan untuk penzahiran dokumen tertentu menurut A 24 k 7 KKM hendaklah mengikut permohonan atau perintah terdahulu untuk penzahiran am menurut A 24 k 3 KKM. Defendan tidak memfailkan permohonan terdahulu untuk penzahiran am. Oleh itu, adalah wajib bagi mahkamah untuk menolak permohonan tersebut melainkan perintah suai atau perlu. Tiada kualiti proviso dikemukakan (lihat perenggan 16–17).

(3) Dokumen yang dipohon untuk penzahiran tidak diperlukan untuk pelupusan secara adil atau relevan dengan prosiding. Isu yang dipertikaikan adalah berkaitan dengan hak pemilikan. Ia tidak melibatkan hak kontraktual dan defendan tidak memohon sebarang remedi kontrak terhadap plaintif. Ia tidak ada kena mengena dengan subjek kausa tindakan dan dengan itu tidak relevan dengan prosiding. Defendan bukanlah pihak dalam subjek perjanjian dokumen yang dipohon, iaitu antara PDC dan plaintif. Sebagai bukan pihak, defendan tidak mempunyai hak untuk menguatkuasakan kontrak, walaupun ia untuk kepentingannya. Ini adalah prinsip undang-undang priviti kontrak yang mantap. Bukan sahaja defendan bukan pihak dalam dokumen perjanjian yang dimohon, ia juga merupakan dokumen sulit (lihat perenggan 23–24, 26 & 28).

(4) Defendan bukan benefisiari pihak ketiga daripada perjanjian yang

didakwa antara PDC dan plaintif. PDC, dalam peruntukan tanahnya untuk tujuan rumah ibadat bukan Islam ('RIBI') untuk masyarakat Hindu, berurusan dengan Lembaga Wakaf Hindu dan bukannya defendan. Dalam erti kata lain, bukan sahaja defendan bukan pihak dalam perjanjian antara PDC dan plaintif — dengan itu, tidak mempunyai hak untuk menguatkuasakan perjanjian tersebut; mereka bukan penerima manfaat pun di bawahnya — oleh itu, tidak ada jangkaan bagi mereka dalam menerima apa-apa secara percuma (lihat perenggan 29–30).]

Cases referred to

Bacom Enterprise Sdn Bhd v Jong Chuk & Ors [2011] 5 MLJ 820, CA (refd)
Badiadin bin Mohd Mahidin & Anor v Arab Malaysian Finance Bhd [1998] 1 MLJ 393, FC (refd)
Boustead Naval Shipyard Sdn Bhd v Dynaforce Corp Sdn Bhd [2015] 1 MLJ 284, CA (refd)
Brand Ace Sdn Bhd v Rapid Rail Sdn Bhd & Anor [2020] MLJU 979; [2020] 1 LNS CLJ 835, HC (refd)
Hong Leong Finance Bhd v Low Thiam Hoe and another appeal [2016] 1 MLJ 301; [2015] 8 CLJ 1, FC (refd)
Mahfar bin Alwee v Jejaka Megan Sdn Bhd & Anor [2007] 4 MLJ 175, HC (refd)
Tiow Weng Theong v Melawangi Sdn Bhd [2015] MLJU 368; [2015] 8 CLJ 470, HC (refd)

Legislation referred to

Rules of Court 2012 O 24 rr 3, 7, 7(4), 8, 12, 13

Tharminder Singh (Alvin Dev Singh with him) (Izral Partnership) for the plantiff. N Ahilan (N Ahilan & Assoc) for the defendants.

Wong Hok Chong JC:

INTRODUCTION

[1] This is the defendants' application for discovery pursuant to O 24 rr 7 and 12 of the Rules of Court 2012 ('the RC'). After hearing submissions, I dismissed the application. These are the grounds for my decision.

BACKGROUND

[2] The defendants' application was made pursuant to two rules of O 24 of the RC: r 7 (for discovery of particular documents) and r 12 (order for production to court):

7 Order for discovery of particular documents (O 24 r 7)

(1) Subject to rule 8, the Court may at any time, on the application of any party to a cause or matter, make an order requiring any other party to make an affidavit stating whether any document specified or described in the application or any class of document so specified or described is, or has at any time been, in his possession, custody or power, and if not then in his possession, custody or power when he parted with it and what has become of it.

12 Order for production to Court (O 24 r 12)

(1) At any stage of the proceedings in any cause or matter the Court may, subject to rule 13(1), order any party to produce to the Court any document in his possession, custody or power relating to any matter in question in the cause or matter that falls within one of the following descriptions: ...

[3] The application sought for the discovery of the following document:

satu Salinan Perjanjian Pembangunan Hartanah di antara Perbadanan Pembangunan Pulau Pinang (PDC) dengan Eco Horizon Sdn Bhd bertarikh 28.06.2016 berkaitan peruntukan tapak tanah bagi rumah ibadat bukan Islam (RIBI) sebagai tapak penggantian tanah bagi rumah ibadat tersebut yang dikenali sebagai Pertubuhan Penganut Seri Kuil Dewi Sri Muthu Mariamman, Batu Kawan, Seberang Perai Selatan, Pulau Pinang.

TIMING OF APPLICATION

[4] The defendants filed their application on 24 February 2021. This was their first application for discovery. By then, the bundle of documents had already been finalised in accordance with the pre-trial directions and trial was scheduled to commence in less than three weeks on 16 March 2021.

[5] The plaintiff objected to the application on procedural and substantive grounds.

OBJECTION ON PROCEDURAL GROUNDS

[6] On the procedural grounds, the plaintiff says that: (a) the delay in the filing of the application and (b) the failure to file a preceding application for general discovery were fatal. I agree with the plaintiff.

DELAY

[7] Delay. Although O 24 r 3 of the RC provides that the application can be made at any time, practice dictates that the application for discovery should be made once the issues have been identified after the close of pleadings, but at the early stages of pre-trial case management before the filing of bundle of documents. If the application is made at the later stages of the proceedings, the applicant must proffer reasonable or cogent explanation for the delay. This is all

the more so if the application is made at the eve of trial.

[8] In *Tiow Weng Theong v Melawangi Sdn Bhd* [2015] MLJU 368; [2015] 8 CLJ 470 ('Melawangi'), the High Court in addressing the issue of delay in the filing of an application for discovery held as follows:

> [13] Next is the question of inordinate delay by the defendants in making this application which has been filed at a belated stage for a whole series of documents when the matter has been set down for trial after close of pleadings and all bundles of documents (BODs') have been filed and exchanged. This suit was commenced way back in the year 2008 and the plaintiff served its BOD on the defendants on 5 December 2013. *No reasonable or plausible explanation was proffered bv the defendants for the unreasonable and inordinate delay in filing the first application for discovery* only on 20 February 2014 more than two months after receiving the plaintiff's BOD on 5 December 2013. *An order for discovery that is unduly oppressive and prejudicial to the plaintiff in pursuing its action expediently will not. in principle. be granted.* Under the circumstances, the plaintiff has not shown that this application at such a late stage is bona fide and necessary in the interests of justice and fair disposal of the present proceedings.

[9] In *Brand Ace Sdn Bhd v Rapid Rail Sdn Bhd & Anor* [2020] MLJU 979; [2020] 1 LNS CLJ 835 ('Brand Ace'), the High Court in addressing the same issue held as follows:

> *Delay*
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> [45] *P ought to have sought discovery of the Discovery Documents at an earlier stage* if, as claimed by P, they are pivotal and highly relevant. As it is, P only requested for the Discovery Documents literally on the eve of the trial. Such delay must be construed against P.
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> ...
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> [53] *Encl 28 was filed by P at a very late stage, when trial was about to commence*, for discovery of a whole series of documents. P was (or ought to have been) aware of their need for the Discovery Documents, at the latest, when preparing and filing the Common Bundle of Documents in October 2018. Yet, encl 28 was only filed more than a year later in February 2020. *No cogent explanation was proffered by P for the unreasonable delay in filing encl 28*.
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> [54] *An order for discovery that is unduly oppressive and prejudicial to the Defendants will not be granted. P has not shown that this application for discovery at such a late stage is bona fide and necessary in the interests of justice and for a fair disposal of the instant suit*.

[10] In my estimation, the approach towards the delay in filing pre-trial matters until the eve of trial adopted by the High Court in *Melawangi* and *Brand Ace* is consistent Federal Court's guidance in *Hong Leong Finance Bhd v Low Thiam Hoe and another appeal* [2016] 1 MLJ 301; [2015] 8 CLJ 1 ('Hong Leong') — albeit that was a case in respect of amendment of pleadings. The

Federal Court held as follows:

> Held: ...
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> (2) *Yamaha Motor* was decided under the old Rules of the High Court 1980. The civil procedure has since then changed with the introduction of the pre-trial case management. *Under the new case management regime the court recognises that a different approach needs to be taken to prevent delay in the progress of a case to trial. The management of cases by the courts prior to the trial is intended to ensure 'just, expeditious and economical disposal' of an action* (paras 18 & 26).
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> (3) When an application to amend a pleading is made at a very late stage, the principles in *Yamaha Motor* ought not to be the sole consideration. *This was because an order for compensation by payment of costs in such a case may not be an adequate remedy and it would also disrupt the administration of justice.* There had been five case managements since 2011 and there was no indication at all that an amendment application was contemplated by the defendant (paras 18 & 27).
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> (4) The Court of Appeal failed to appreciate that Low *bears the burden of producing material and cogent reasons to explain why the change was sought so late and was not sought earlier.* In the defendant's affidavit-in-support, all that was stated was that he had only realised that important issues, namely the first and second proposed amendments were not pleaded when he was preparing for trial. Such an explanation could not be accepted (para 29).

[11] It is apparent that the reasons given in *Hong Leong* for requiring a cogent and reasonable explanation for delay in an application for amendment of pleadings at the eve of trial are equally applicable where that application happens to be an application for discovery. In both cases, the management of cases by the courts prior to the trial is intended to ensure 'just, expeditious and economical disposal' of an action; an order for compensation by payment of costs in such a case may not be an adequate remedy and it would also disrupt the administration of justice.

INORDINATE DELAY

[12] This suit was commenced on 3 April 2019. From the documents appended by the defendants in their affidavit in support, it is incontrovertible that:

(a) the existence of this issue was known to the defendants by May 2019. This is apparent from Nava & Associates' (PDC's solicitor) letter to the defendants' solicitor dated 2 May 2019; and

(b) the existence of the document sought was known to the defendants by July 2020. This is apparent from the defendants' solicitor to Nava & Associates dated 30 July 2020.

[13] The application was filed on the eve of the trial. It was less than three weeks before the trial was due to start.

[14] This delay was inordinate. Pleadings had long closed and the filing of the bundle of documents had been long concluded. At least 22 months had lapsed from the time the defendants became aware of the purported issue and eight months from the time the defendants became aware of the document sought.

NO REASONABLE OR COGENT EXPLANATION FOR DELAY

[15] The defendants did not proffer any reasonable or cogent explanation for the delay.

NO PRECEDING APPLICATION FOR GENERAL DISCOVERY

[16] No preceding application for general discovery. The application for discovery of a particular document pursuant to O 24 r 7 of the RC should follow a preceding application or order for general discovery pursuant to O 24 r 3 of the RC. Order 24 r 7(4) of the RC provides as follows:

> (4) An order under this rule shall not be made in any cause or matter in respect of any party before an order under rule 3 has first been obtained in respect of that party, unless, in the opinion of the Court, the order is necessary or desirable.

[17] The defendants had not filed a preceding application for general discovery. It is thus mandatory for this court to dismiss this application unless the order is necessary or desirable. I found none of the proviso qualities present here — this is explained below under the objection on substantive grounds.

OBJECTION ON SUBSTANTIVE GROUNDS

[18] On the substantive grounds, the plaintiff says that the document sought is not necessary for disposing fairly of the cause or matter or relevant to the proceedings. I agree with the plaintiff.

NECESSITY/RELEVANCY

[19] The provision for the discovery of a particular document (O 24 r 7) is subject to O 24 r 8 which provides as follows:

> 8 Discovery to be ordered only if necessary (O 24 r 8)
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> On the hearing of an application for an order under rule 3, 7 or 7A, the Court, if satisfied that discovery is not *necessary*. or not necessary at that stage of the cause or matter, may dismiss or adjourn the application and shall in any case refuse to make

such an order if and so far as it is of the opinion that discovery is not necessary either for disposing fairly of the cause or matter or for saving costs.

[20] Similarly, the provision for the order for production to court (O 24 r 12) is subject to O 24 r 13 which provides as follows:

13 Production to be ordered only if necessary (O 24 r 13)

(1) An order for the production of any documents for inspection or to the Court shall not be made under any of the foregoing rules unless the Court is of the opinion that the order is *necessary* either for disposing fairly of the cause or matter or for saving costs.

[21] The court in *Brand Ace*, referring to two authoritative judgments, succinctly explains necessity and relevancy as follows:

[23] Necessity may not be the 'mother of invention' in this case, but necessity is certainly the proper (and only) basis for an order for discovery. As stated by the Court of Appeal in *Nguang Chan aka Nguang Chan Liquor Trader & Ors v Hai-O Enterprise Bhd & Ors* [2009] 5 MLJ 40 at p 51:

> discovery may only be ordered if the court is of opinion that such order is necessary either for disposing fairly of the cause or matter or for saving costs. The *test is necessity* not fairness and it is for the applicant to satisfy the court ...
>
> If necessity is not the prime concern of the court, allowing discovery would tantamount to allowing the respondents to fish for evidence which defeats the purpose of the rule by causing the appellants to suffer unfair disadvantage if they fail to comply with an order which is oppressive and incapable of compliance".

[24] In *Yekambaran s/o Marimuthu v Malayawata Steel Bhd* [1993] MLJU 96; [1994] 2 CLJ 581 *at 585, the High Court said:*

> The essential elements for an order for discovery are threefold, namely first, there must be a 'document', secondly, the document must be '*relevant*' and thirdly, the document must be or have been in the 'possession, custody or power' of the person against whom the order for discovery is sought.

ISSUE IN DISPUTE

[22] The plaintiff's cause of action is founded in the tort of trespass onto its land. The defendants' defence is they have a licence from the previous owner to stay on plaintiff's land. The issue in dispute is simply whether the defendants have the proprietary right to remain on the plaintiff's land.

DOCUMENT SOUGHT NOT NECESSARY/RELEVANT

[23] The document sought for discovery is not necessary for the fair disposal of or relevant to the proceedings for the following reasons.

NO CONTRACTUAL ISSUES IN SUIT

[24] First, the issue is dispute pertains to proprietary rights. It does not concern contractual rights and the defendants, as a matter of fact, are not seeking any contractual remedies against the plaintiff. It has nothing to do with the subject cause of action and is thus irrelevant to the proceedings.

[25] In *Mahfar bin Alwee v Jejaka Megan Sdn Bhd & Anor* [2007] 4 MLJ 175 ('Mahfar'), the High Court in addressing the relevancy of a document sought in discovery, which is not related to the subject cause of action, held as follows:

> [21] Reverting to the above submissions, it is apparent to me that the sole question for determination in the instant application is whether the documents sought by the plaintiff are relevant to his cause of action. In this regard, I am of the view that the plaintiff bears the burden of proving relevancy.
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> [22] For this purpose, I shall refer to my judgment on end (21) in relation to D2's summons in chambers which sought to strike out the plaintiff's writ and statement of claim herein under O 18 r 19(1)(a), (b) or (c). In essence, I held that D2 owed fiduciary duties to the plaintiff to carry out the housing project to completion and subsequent delivery thereof to the purchasers including the plaintiff, as a result of which the plaintiff's statement of claim had disclosed a reasonable cause of action based on an implied trust in favour of the plaintiff, thereby saving the plaintiff's claim from being struck out under O 18 r 19(11)(a), (b) or (c).
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> [23] It is to be noted that the documents sought by the plaintiff are essentially documents founded upon the law of contract; and I am unable to find any relevance of these documents when the plaintiff's cause of action was not founded on contract but on fiduciary duties and implied trust. The plaintiff's application is therefore without any merit.

PRIVITY OF CONTRACT

[26] Second, the defendants are not a party to the agreement subject of the document sought, which is between PDC and the plaintiff. As a non-party thereto, the defendants have no rights to enforce the contract, even if it is for his benefit. This is a trite principle of law of the privity of contract (*Bacom Enterprises Sdn Bhd v Jong Chuk & Ors* [2011] 5 MLJ 820 ('Bacom'), *Boustead Naval Shipyard Sdn Bhd v Dynaforce Corp Sdn Bhd* [2015] 1 MLJ 284; *Badiaddin bin Mohd Mahidin & Anor V Arab Malaysian Finance Bhd* [1998] 1 MLJ 393).

[27] In *Bacom*, the Court of Appeal held as follows:

> [101] ... we are of the view that consequently, the plaintiff's direct claim against Bacom would suffer the same fate on the doctrine of privity. Bacom is clearly not a party to the development agreement. In this respect, we would unhesitatingly agree with the submission of learned counsel for Bacom that that Bacom has agreed with

A the first to the fifth defendants that it is bound by the terms of the development agreement is a matter between the two parties and cannot confer contractual privity between the plaintiff and Bacom. *The plaintiff is definitely not a party to the sale agreement and hence cannot enforce or rely for protection on its provisions even if some provision therein was intended to benefit him*. In *Scruttons Ltd v Midland Silicones*
B *Ltd* [1962] AC 446, which dealt with the English position on the doctrine of privity, Lord Reid said (at pp 472–473):

> In considering the various arguments for the appellants, I think it is necessary to have in mind certain established principles of the English law of contract. Although I may regret it, I find it impossible to deny the existence of the general
C rule that a stranger to a contract cannot in a question with either of the contracting parties take advantage of provisions of the contract, even where it is clear from the contract that some provision in it was intended to benefit him. That rule appears to have been crystallised a century ago in *Tweddle v Atkinson* (1861) 1 B & S 393 and finally established in this House in *Dunlop*
D *Pneumatic Tyre Co Ltd v Selfridge & Co Ltd* [1915] AC 847).

[28] I also hasten to add that, not only are the defendants not a party to the agreement of the document sought, it is also a confidential document. This is
E apparent from Nava & Associates' letter to the plaintiff's solicitor dated 10 August 2020.

NOT EVEN BENEFICIARY OF THE CONTRACT

F **[29]** Third, the defendants are not even a third party beneficiary of the purported agreement between PDC and the plaintiff. PDC, in its allocation of land for the purposes of *rumah ibadat bukan Islam* ('RIBI') for the Hindu community, were dealing with the Hindu Endowment Board and not the defendant. This is apparent from the defendants' solicitor's letter to PDC dated
G 26 February 2019.

[30] In other words, not only were the defendants not a party to the agreement between PDC and the plaintiff — thus, having no right to enforce the agreement; they were not even a beneficiary thereunder — thus, there was
H no expectation of them even receiving anything gratuitously.

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DECISION

[31] For the above reasons, I dismissed the defendants' application .

Application dismissed.

Reported by K Selvaraju